

COMMONWEALTH OF VIRGINIA
DEPARTMENT OF TRANSPORTATION
INNOVATIVE PROJECT DELIVERY DIVISION
MEMORANDUM

GENERAL SUBJECT:	<u>Design-Build Contracts</u>	NUMBER:	<u>IPD 06-02.0</u>
		DATE:	<u>April 26, 2006</u>
SPECIFIC SUBJECT:	<u>Design-Build Procurement Authorization and Pre- Advertisement Requirements</u>	SUPERSEDES:	<u>N/A</u>
		SUNSET/ EXPIRES:	<u>In effect until superseded</u>

Original Signature on File

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Director, Innovative Project Delivery Division

PURPOSE: To establish procurement authorization and pre-advertisement requirements for design-build contracts. VDOT's Director, Innovative Project Delivery Division is responsible for procurement of VDOT's design-build contracts pursuant to §33.1-12 of the Code of Virginia.

OBJECTIVE: To ensure procurement of design-build contracts, for transportation facilities, complies with state and federal laws and Virginia Department of Transportation (VDOT) policies and procedures.

BACKGROUND: State and federal law address requirements for competitive procurement. The Virginia Public Procurement Act (§ 2.2-4300 et seq.) and federal law (23 CFR 635.104) state a specific preference for competitive sealed bidding, unless design-build procurement is justified by a Finding of Public Interest (FOPI).

The 2001 Virginia General Assembly amended and reenacted § 33.1-12 of the Code of Virginia, relating to powers and duties of the Commonwealth Transportation Board (CTB) authorizing the award of design-build contracts. ~~The code provides that the CTB may annually award five (5) design-build contracts valued at no more than \$20 million. In addition, the CTB may award design-build contracts valued at more than \$20 million, provided that no more than five (5) of these latter contracts are in force at the same time.~~ The code requires the CTB to adopt Objective Criteria (Refer to Appendix C of VDOT's Design-Build Procurement Manual) for project selection, which includes one or more of following: Expedited Schedule, Established Budget, Well-defined Scope, Risk Analysis, Prequalification of Design-Build Firms, and Competitive Bidding Processes. **

VDOT will utilize procurement procedures consistent with "competitive sealed bidding" as defined in § 2.2-4301 and subsection B of § 2.2-4310, unless a FOPI has been approved by the Commonwealth Transportation Commissioner to initiate design-build procurement. Once approved, VDOT will follow the procedures outlined in VDOT's Design-Build Procurement Manual and the following design-build authorization and pre-advertisement requirements.

DESIGN-BUILD AUTHORIZATION:

If a project satisfies one or more of the objective criteria for the selection of design-build projects, per district-level review and IPD assessment, the project manager will draft a FOPI for review by the Director, IPD. The

FOPI will note the nature and scope of the project and the reasons for the Commissioner's written determination that awarding a design-build contract will best serve the public interest. The Director of the IPD Division will forward the FOPI with a recommendation to the Chief Engineer for approval by the Commissioner. The approved FOPI will serve as an authorization for the procurement of a design-build contract. The FOPI will be retained for public inspection in IPD's procurement records.

Note that a well-defined project scope is an essential element for successful procurement and project delivery. An approved environmental document provides an explanation of purpose and need, and outlines the independent utility required to define the scope of a project. The scope of a project is the basis for the cost and schedule estimate. Although an RFQ may be advertised prior to completion of the environmental review process, VDOT reserves the right to cancel any procurement, with no obligation to offerors, if the "no-build" option is the preferred alternative in a final environmental document.

PRE-ADVERTISEMENT CONDITIONS:

A Request for Proposals (RFP) will not be advertised until the following milestone events have been completed:

1. The project is identified and included in VDOT's Six-Year Improvement Program (SYP), which indicates local and regional support for a project.
2. Adequate funding for design, right-of-way and construction of the entire project is identified and programmed before initiating procurement of a design-build contract.
3. The project is delivered in accordance with procedures set forth by current Federal Register 23 CFR Part 627, 635, 636, 637 and 710 et al.
4. The NEPA environmental review process is complete. The NEPA review process is concluded with a Categorical Exclusion (CE) classification, an approved Finding of No Significant Impact (FONSI), or an approved Record of Decision (ROD) as defined in 23 CFR 771.113(a).
5. The district project manager has completed a preliminary risk management plan.

*** Note: House Bill 666 was approved and enacted as summarized below. HB 666 deleted a cap on the number of design-build contracts permitted by law.*

CHAPTER 417

An Act to amend and reenact § [33.1-12](#) of the Code of Virginia, relating to awarding of design-build contracts by the Commonwealth Transportation Board.

[H 666]

Approved March 31, 2006

02/28/06 House: Signed by Speaker

03/01/06 Senate: Signed by President

03/31/06 Governor: Approved by Governor-Chapter 417 (effective 7/1/06)

04/06/06 Governor: Acts of Assembly Chapter text (CHAP0417)